IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16-07-2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.804 of 2003

Ponnusamy .. Appellant./Defendant

Versus

Rukmaniammal .. Respondent/Plaintiff

The second appeal has been filed against the judgment and decree of the Subordinate Judge, Kallakurichi, passed in A.S.No.45 of 1999, dated 08.02.2002, confirming the judgment and decree of the Principal District Munsif, Kallakurichi, passed in O.S.No.1135 of 1995, dated 03.04.1998.

For Appellant : Mr.K.Srinivasan

For Respondent : Ms.Mythili Suresh for
M/s.Sarvabhauman Associates

J U D G E M E N T

The second appeal has been filed against the judgment and decree, dated 08.02.2002, passed by the Subordinate Judge, Kallakurichi, in A.S.No.45 of 1999, confirming the judgment and decree, dated 03.04.1998, passed by the Principal District Munsif in O.S.No.1135 of 1995.

2. The defendant in the suit O.S.No.1135 of 1995 is the appellant in the present second appeal. The suit had been filed by the plaintiff for the recovery of a sum of Rs.8,450/-, based on a promissory note said to have been executed by the defendant.

3. The brief facts of the case, as stated by the plaintiff are as follows:

The plaintiff had stated that the defendant had borrowed a sum of Rs.7,000/- as loan, on 09.08.1993, from Senthamarai Selvi W/o.Kothandaraman, residing at Patti Street, Themmoor Village,

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Kattumannar Koil Taluk, promising to repay the said amount, with 12% interest, by executing a promissory note. However, the defendant had not repaid the said amount. Thereafter, Senthamarai Selvi had made over the promissory note to the plaintiff for proper consideration. The plaintiff had issued a legal notice, dated 26.10.1995, to the defendant, for which the defendant had issued a reply notice, dated 20.11.1995. Thereafter, the plaintiff had filed the suit in O.S.No.1135 of 1995.

4. In the written statement filed by the defendant the claims made by the plaintiff have been denied. It has been stated that the defendant has not borrowed the sum of Rs.7,000/- from Senthamarai Selvi, nor has he executed a promissory note, on 09.08.1993. There were no monetary transaction between the plaintiff and the defendant. The claim of the plaintiff that the promissory note had been made over to the plaintiff is false. The defendant had issued a suitable reply to the legal notice sent by the plaintiff. In fact the defendant had borrowed a sum of Rs.5,000/- from Kothandaraman, husband of Senthamarai Selvi and when the defendant had met Kothandaraman to settle the matter, Kothandaraman has demanded a high rate of interest and since the defendant had refused to pay the same, the said Kothandaraman had lodged a complaint before the police. The defendant had issued a legal notice and thereafter, he had repaid the loan. Only with an ulterior motive of harassing the defendant, Kothandaraman had caused the filing of the suit through the plaintiff as though the promissory note had been made over to the plaintiff by his wife Senthamarai Selvi. In such circumstances, the suit has to be dismissed.

5. Based on the averments made by the plaintiff in her plaint and by the defendant in his written statement, the trial Court had framed the following issues for consideration:

i) Whether the plaintiff is entitled to the suit claim of the principal amount along with interest and costs.

ii) Is it true that the defendant had not executed the promissory note, dated 09.08.1993, after borrowing a sum of Rs.7,000/- from the plaintiff.

iii) Whether it is correct to state that the making over of the promissory note, on 15.09.1995, is false.

iv) Whether it is correct to state that the plaintiff had executed a promissory note on 10.04.1992 after getting Rs.5000/- from Senthamarai Selvi Kothandaraman and that Kothandaraman had executed it for the interest?

v) To what relief the plaintiff is entitled to?

6. The plaintiff had contended that the defendant had borrowed a sum of Rs.7,000/-, as loan, from Senthamarai Selvi, wife of Kothandaraman, by executing a promissory note dated

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09.08.1993, marked as Exhibit A-1 and after the promissory note had been made over to the plaintiff the defendant had not repaid the amount borrowed by him despite the issuance of notice in that regard.

7. On the contrary, the defendant had stated that he had not executed the promissory note, as claimed by the plaintiff. In fact, the defendant had borrowed a sum of Rs.5,000/- from Kothandaraman, the husband of Senthamarai Selvi based on a promissory note and that the defendant had returned the said amount borrowed by him and had received back the promissory note executed by him in favour of Kothandaraman. This fact has not been denied by the plaintiff. The defendant had submitted by way of oral evidence that he had borrowed a sum of Rs.5,000/- from Kothandaraman by executing a promissory in his favour which has been marked as Exhibit B-2 and that he had not borrowed any other sum from the said Kothandaraman.

8. The trial Court had found that Exhibit B-2 is a promissory note executed by the defendant in favour of Kothandaraman, on 10.04.1992, for having borrowed a sum of Rs.5,000/- from him and that the said promissory note did not relate to the interest payable by the defendant.

9. The trial Court had further held that the defendant had not let in sufficient evidence to prove that the signature on the promissory note marked as Exhibit A-1 was not his. Though it was open to the defendant to have let in expert evidence, through a hand writing expert, to prove that the signature on the promissory note was not his, he has failed to do so. It was also held by the trial Court that the fact that Senthamarai Selvi had received the loan amount of Rs.7,000/- along with interest thereon and had made over the promissory note executed by the defendant to the plaintiff has been sufficiently proved by the oral evidence let in on behalf of the plaintiff. On such findings, the trial Court had decreed the suit as prayed for by its judgment and decree, dated 03.04.1998.

10. Being aggrieved by the said judgment and decree of the trial Court, dated 03.04.1998, the defendant had filed an appeal before the Sub-Court, Kallkurichi, in A.S.No.45 of 1999.

11. Based on the judgment of the trial Court, the averments made on behalf of the plaintiff, as well as the defendant and taking into consideration both the oral and documentary evidence let in on behalf of the parties concerned, the Subordinate Judge, Kallakurichi had framed the following points for consideration:

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i) Whether Exhibit A-1 has been falsely and fraudulently fabricated by the plaintiff/Respondent?

ii) Whether there has been due consideration for the execution of the promissory note?

iii) Whether Exhibit A-2 has been proved by the plaintiff/Respondent in accordance with law?

iv) Whether the judgment and decree of the lower Appellate Court is sustainable in law?

v) What other reliefs the defendant/appellant is entitled to before this Court?

12. While answering the issues framed for consideration the lower Appellate Court had come to the conclusion that the trial Court had failed to examine whether the signature on the promissory note, marked as Exhibit A-1, was that of the defendant. However, by comparing the signature of the defendant on the various documents that were available before the lower Appellate Court, it had come to the conclusion that the signature on Exhibit A-1 promissory note, was that of the defendant.

13. After analysing the evidence available on record, the lower Appellate Court had come to the conclusion that Exhibit A-1, dated 09.08.1993, had been validly executed by the defendant for due consideration. In view of the said findings, the lower Appellate Court had come to the conclusion that Exhibit A-2 is valid in the eye of law, as it has been sufficiently proved by the plaintiff to the satisfaction of the Court. In such circumstances, the lower Appellate Court had confirmed the judgment and decree of the trial Court, granting the reliefs to the plaintiff, as prayed for in the suit in O.S.No.1135 of 1995.

14. The defendant in the suit in O.S.No.1135 of 1995 and the appellant in the first appeal in A.S.No.45 of 1999, has filed the present second appeal stating, inter alia, that the Courts below have erred in holding that the plaintiff in the suit and the respondent in the present second appeal is entitled to the said claim on the basis of Exhibit A-1, in the absence of sufficient proof of due execution of the promissory note. Even though the lower Appellate Court had specifically found, on comparison, that the signatures of the defendant in Exhibit A-1 and Exhibit B-2 were differing, it had wrongly decided in favour of the plaintiff by decreeing the suit.

15. The Courts below have not sufficiently considered the evidence of D.W.2 stating that he is not the scribe of the suit promissory note. Further, the Courts below have not taken into account the strained relationship between the parties involved in the suit, before coming to their conclusion. It was also stated that the Courts below have not considered the fact that the

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payment of due consideration for the execution of the promissory note has not been sufficiently proved. Further, there was no evidence shown by the plaintiff that he is the assignee of the suit promissory note, marked as Exhibit A1, for valid consideration.

16. The Second appeal had been admitted by this Court on the following substantial questions of law:

> 1. Whether the Courts below is right in granting a decree on the basis of Exhibit A-1 after having found that the signature found in Exhibit A-1 differs from the signature in the admitted document Ex.A-2 and also the signature found in the deposition of the appellant?
>
> 2. Whether the Courts below is right in granting a decree on the basis of Exhibit A-1 in the absence of any evidence relating due execution of Promissory Note as alleged especially when the burden is upon the respondent?
>
> 3. Whether the Courts below is right in holding that the respondent as assignee in the absence of any evidence that the assignment is for valid consideration?

17. On analysing the rival contentions of the parties concerned and on examining the judgment and decree of the courts below and the evidence on record, this Court is of the considered view that the appellant has not shown sufficient and valid grounds for this Court to interfere with the conclusions arrived at by the Courts below. Even though the lower Appellate Court had found that the signature found on Exhibit A-1 differs from the signature found on Exhibit B-2, it had come to the conclusion that the signature found on the suit promissory note marked as Exhibit A-1 is that of the defendant, who is the appellant in the present second appeal. The Courts below had also rightly come to the conclusion that the plaintiff, who is the respondent in the present second appeal, is the holder in due course of the suit promissory note, marked as Exhibit A-1, for valid consideration. In such circumstances, this Court does not interfere in the findings of the Courts below based on mere appreciation of evidence as held in GURDEV KAUR AND OTHERS Vs. KAKI AND OTHERS (2007 (1) CTC 334), unless it involves substantial questions of law.

18. In the present case, it is clearly found that no such substantial questions of law are involved, as seen from the facts

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and circumstances of the case. In such circumstances, this Court is of the considered view that there is no reason or cause to interfere with the judgment and decree passed by the Courts below. Accordingly, the second appeal stands dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

csh

To

1) The Subordinate Judge, Kallakurichi.

2) The Principal District Munsif, Kallakurichi.

3. The Section Officer
VR Section,
High Court, madras

1 cc to M/s. Sarvabhuman, Associates, Sr. 43202

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